

NEW JERSEY BOARD OF PUBLIC UTILITIES

Proposed new rules: N.J.A.C. 14:4-4

Affiliate Relations, Public Utility Holding Company Standards

Proposed December 19, 2005

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PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

Affiliate Relations, Public Utility Holding Company Standards

Proposed New Rules: N.J.A.C. 14:4-4

Authorized By: New Jersey Board of Public Utilities, Jeanne M. Fox, President, Frederick F. Butler, Connie O. Hughes, and Jack Alter, Commissioners

Authority: N.J.S.A. 48:2-1 et seq., in particular 48:2-13; 48:2-16; 48:2-16.1; 48:2-16.2; 48:2-23; 48:2-29.2; 48:2-37; 48:2-51.1; 48:3-7; 48:3-9; 48:3-10; 48:3-49 et seq.

Calendar Reference: Please see below for explanation of calendar requirement.

BPU Docket Number: AX05070641

Proposal Number: PRN 2005-458

The Board will hold a public hearing on this proposal at:

9:30 a.m. on February 7, 2006
Board Hearing Room
New Jersey Board of Public Utilities
2 Gateway Center, 8th Floor
Newark, New Jersey

Submit comments by February 17, 2006 to:
New Jersey Board of Public Utilities
Kristi Izzo, Secretary
ATTN: BPU Docket Number: AX05070641
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The New Jersey Board of Public Utilities is proposing rules at N.J.A.C. 14:4-4 to supplement existing provisions related to affiliate relations. These rules are intended to compensate for vital regulatory protections that would otherwise be lost by the imminent repeal of the Public Utility Holding Company Act of 1935 (“PUHCA”), 15 U.S.C. § 79a et seq. The absence of such protections would pose unnecessary risks to the State of New Jersey and its public utility ratepayers. The new rules further the Board’s statutory mandate to ensure the provision of safe, adequate and proper service at just and reasonable rates, N.J.S.A. 48:2-1 et seq. The proposed rules apply to New Jersey electric and gas public utilities which are owned by a public utility holding company as well as to the parent holding company itself.

The proposed rules create a new subchapter within the Board’s Energy Competition Standards chapter, N.J.A.C. 14:4. The rules are designed to address the diversification activities of New Jersey public utilities and companies owning such utilities. While the proposed rules are broader than the existing Affiliate Relations Standards (found at N.J.A.C. 14:4-5), they do not replace any of those rules or other existing rules. They are intended to compensate for federal protections that will be lost once PUHCA is repealed on February 8, 2006.

The proposed new rules would prevent a holding company that owns a New Jersey gas or electric public utility from investing more than 25% of the combined assets of its utility and utility-related subsidiaries into businesses unrelated to the utility industry. In addition, the proposed rule would prevent a holding company whose primary businesses are not utility related from purchasing a New Jersey utility, unless they divest a sufficient amount of non-utility assets in order to comply with the rule.

Presently, PUHCA prevents non-utilities from owning public utilities, and restricts the types of investments – whether utility, energy-related, or otherwise – that can be made

by holding companies owning utilities. The proposed rules, while not as restrictive as the existing PUHCA rules, would nevertheless help protect New Jersey utility ratepayers from unconstrained diversification activities by parent holding companies, and restrict companies who are not primarily involved in the utility industry from purchasing a New Jersey utility.

Proposed new N.J.A.C. 14:4-4.1 sets forth the entities regulated by the rules, and the Board's intent to prevent risks inherent in ownership of utilities by holding companies.

Proposed new N.J.A.C. 14:4-4.2 includes definitions of key terms used in the rules, and refers to proposed N.J.A.C. 14:4-1.2 (see 37 NJR 3924) for additional terms.

Proposed new N.J.A.C. 14:4-4.3 sets forth the basic substantive requirement that a holding company that owns a New Jersey gas or electric public utility may not invest more than 25% of the combined assets of its utility and utility-related subsidiaries into businesses unrelated to the utility industry. This section also establishes a reporting requirement to ensure that the Board can monitor compliance.

It should be noted that a recent proposal to readopt N.J.A.C. 14:4-4 (see 37 NJR 3911(a)) has affected the codification of the chapter in which these new rules are located. This proposal takes this proposed recodification into account. Specifically, the rules currently located at N.J.A.C. 14:4, Interim Environmental Information Disclosure Standards, have been proposed for recodification, with non-substantive amendments, as N.J.A.C. 14:8-3 (see 37 NJR 3940). As part of that same proposal, the existing Affiliate Relations Standards now found at N.J.A.C. 14:4-5, are proposed to be recodified as N.J.A.C. 14:4-3 (see 37 NJR 3927).

As the Board has provided a 60-day comment period on these proposed new rules, the proposed new rules are exempted from the rulemaking calendar requirements set forth at N.J.A.C. 1:30-3.1 and 3.2, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

These proposed new rules will have a positive social impact. There is a potential for economic harm to a utility when it is acquired by a holding company, as described below in the economic impact statement. These rules will help protect the integrity of such public utilities and will thus ensure that investors and utility ratepayers can rely on and have continued confidence in New Jersey public utilities.

Economic Impact

The rules may reduce operating costs for New Jersey public utilities. The ownership of New Jersey electric or gas public utilities by public utility holding companies create unique problems that require specific regulatory oversight. First, holding company

investments in non-utility businesses may lead to ratepayer subsidization of non-utility services. Second, the acquisition of a utility by a holding company can affect the incentives of utility managers, as new managers may have priorities other than local utility service and may lack the state-specific and utility experience necessary to ensure the provision of safe, adequate and proper service at just and reasonable rates, required in N.J.S.A. 48:2-1 et seq. Third, if the utility's credit ratings decline as a result of activities at the public utility holding company level or of an unregulated affiliate, the compensation demanded by providers of capital can increase. Consequently, to the extent that any New Jersey gas or electric public utility is or may be harmed in these ways by their public utility holding company, the proposed new rules could reduce the operating costs of the New Jersey gas or electric public utility.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. The new rules are necessary to replace the imminent repeal of PUHCA, 15 U.S.C. § 79a et seq., and to protect New Jersey ratepayers from potential harm. PUHCA was enacted by Congress in the 1930's to regulate holding companies owning electric or gas utilities. On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005, which repeals PUHCA effective in February 2006. PUHCA provides significant protections for the ratepayers of New Jersey, such as restrictions on the ability of public utility holding companies to diversify into other businesses unrelated to the provision of safe, adequate and proper utility service. The Board believes that such protections are crucial and should be continued at the state level. These proposed new rules, however, are not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporate or refers to Federal law, Federal standards or Federal requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal standards analysis for this proposal.

Jobs Impact

The Board does not anticipate that these proposed new rules will have a significant impact on jobs in New Jersey. It is not anticipated that the proposed new rules will result in the creation of new jobs or the loss of existing jobs. The proposed new rules are unlikely to have an impact on any other sector of the economy of the State.

Agriculture Industry Impact

The Board does not anticipate that the proposed new rules will have any impact on the agriculture industry in New Jersey. The rules apply statewide and affect all citizens equally.

Regulatory Flexibility Analysis

The proposed new rules will impose no recordkeeping, reporting or other compliance requirements on small businesses. A small business, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., is a business that has fewer than 100 employees. The proposed new rules apply to New Jersey electric and gas public utilities and their public utility holding companies. None of these companies that do business in New Jersey have fewer than 100 employees, and, therefore, we expect there will be no impact.

Smart Growth Impact

The Board anticipates that the proposed rules will have no impact on either the achievement of smart growth or the implementation of the State Development and Redevelopment Plan. The State Plan is intended to “provide a coordinated, integrated and comprehensive plan for the growth, development, renewal and conservation of the State and its regions” and to “identify areas for growth, agriculture, open space conservation and other appropriate designations.” N.J.S.A. 52:18A-199a. Smart growth is based on the concepts of focusing new growth into redevelopment of older urban and suburban areas, protecting existing open space, conserving natural resources, increasing transportation options and transit availability, reducing automobile traffic and dependency, stabilizing property taxes, and providing affordable housing.” These rules apply uniformly Statewide and the Board does not expect that they will affect the location of future development. Therefore, the proposed new rules will not impact smart growth or the State Plan.

Full text of the proposed new rules follows (addition indicated in boldface thus; deletion indicated with brackets [thus]):

SUBCHAPTER 4. PUBLIC UTILITY HOLDING COMPANY STANDARDS

14:4-4.1 Scope

This subchapter sets forth requirements that apply to electric and/or gas public utilities that operate in New Jersey and are owned by a public utility holding company. The subchapter is intended to protect New Jersey utility ratepayers from the risks presented by the ownership of a New Jersey electric or gas public utility by a public utility holding company.

14:4-4.2 Definitions

(a) As used in this subchapter, “Board”, “electric public utility”, “electricity related services”, “existing products and/or services”, “gas public utility”, “gas related services”,

“person”, “public utility holding company”, and “shared services” have the same meaning as used in N.J.A.C. 14:4-1.2.

(b) The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates.

“Public utility holding company system” means a public utility holding company, together with its subsidiary companies.

“Subsidiary” or “subsidiary company” of a public utility holding company means:

1. Any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such public utility holding company; and
2. Any person, the management or policies of which the Board, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such public utility holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers that such person be subject to the obligations, duties, and liabilities imposed by this subchapter upon subsidiary companies of holding companies.

“Voting security” means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

“Nonutility associate” means a subsidiary company, in a public utility holding company system, that is not an electric or gas public utility or utility associate.

“Utility associate” means a subsidiary company, in a public utility holding company system, that directly or indirectly derives or will derive substantially all of its revenues (greater than 70%) from:

1. Producing, generating, transmitting, delivering, distributing, storing, selling, marketing, and/or furnishing gas, oil, electricity and/or steam energy, to wholesale and/or retail customers;
2. Gas and/or electricity related services;
3. Existing products and/or services; and/or;
4. Shared services.

14:4-4.3 Asset investments

(a) Each electric or gas public utility and its public utility holding company shall ensure that the aggregate assets of all nonutility associates in the public utility holding company system not exceed twenty-five percent of the aggregate assets of all public utilities and utility associates in the public utility holding company system. The Board may adjust this percentage level an additional ten percentage points higher or lower for each electric or gas public utility as it deems appropriate to ensure safe, adequate and proper service.

(b) Each electric or gas public utility or its public utility holding company shall file an annual report with the Board that includes:

1. A listing of names and total assets for each subsidiary in the public utility holding company system;
2. The assets of all nonutility associates as a percentage of total assets of all public utilities and utility associates in the public utility holding company system; and
3. A certification by the chief executive officer and board of directors, of both the public utility holding company and electric or gas public utility, if applicable, that the percentage of assets in nonutility associates does not contravene this subchapter.